

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

SHIN-EI BOEKI, LTD.  
No. 1-4, 1-Chome  
Hatchobori Chuo-Ku  
Tokyo, Japan 104

v.

SCOTT KAJIYA  
1820 West 220<sup>th</sup>  
Torrance, CA 90501

and

MICHAEL W. BINGHAM  
130 Ridgefield Drive  
York, PA 17403

and

CARY BRIGGS  
130 Ridgefield Drive  
York, PA 17403

and

SIGN LANGUAGE EYEWEAR, INC.  
d/b/a SIGN LANGUAGE HABITAT  
1820 West 220<sup>th</sup>  
Torrance, CA 90501

and

SI SCOOTER WORKS, LLC  
406 North Main Street  
Shrewsbury, PA 17361

CIVIL ACTION

NO. 1:CV-00-2241

FILED  
HARRISBURG

FEB 27 2002

MARY E. D'ANDREA, CLERK

Per  DEPUTY CLERK

AMENDED COMPLAINT

Plaintiff Shin-Ei Boeki, Ltd., by its undersigned counsel, for its amended complaint against defendants Scott Kajiya, Michael W. Bingham, Cary Briggs, Sign Language Eyewear, Inc. d/b/a Sign Language Habitat and SI Scooter Works, LLC, alleges as follows:

### Summary of the Action

1. This is an action by a Japanese distributor of pedal scooters against three individuals and two corporations, which ordered almost \$700,000 worth of goods from the plaintiff. Pursuant to the terms of the purchase orders signed by defendant Scott Kajiya on behalf of the remaining defendants, 30% of the total amount due for each purchase order was due upon shipment of the goods and the remaining 70% was to be paid within one week of custom clearance at the United States border. Another, smaller order for accessories was due cash on delivery. Despite the shipment of all of the goods which were the subject of the purchase order, with the exception of \$47,598.60 of goods which were not shipped as a result of payment default, the goods were shipped to the defendants as ordered. Despite partial payments received from the defendants in the amount of \$160,097.70, there remains an outstanding balance of \$245,487.30 remaining unpaid and owing as well as a loss suffered by plaintiff on goods not released and partially resold in order to mitigate the damages suffered due to the breach. Plaintiff seeks judgment against the defendants, jointly and severally in the amount of \$461,062.70 together with interest and the costs of this action.

### The Parties

2. Plaintiff Shin-Ei Boeki, Ltd., is a corporation formed under the laws of Japan, with an address at No. 104, 1-Chome, Hatchobori, Chuo-Ku, Tokyo, Japan 104.

3. Defendant Scott Kajiya ("Kajiya") is an individual resident of the State of California, with an address located at 1820 West 220<sup>th</sup>, Torrance, CA 90501.

4. Defendant Michael W. Bingham ("Bingham") is an individual resident of the Commonwealth of Pennsylvania with a place of business located at 130 Ridgefield Drive, York, PA 17403.

5. Defendant Cary Briggs ("Briggs") is an individual resident of the Commonwealth of Pennsylvania, with an address at 130 Ridgefield Drive, York, PA 17403.

6. Defendant Sign Language Eyewear, Inc. is a California business corporation with an address located at 1820 West 220<sup>th</sup>, Torrance, CA 90501. At all times relevant hereto, Sign Language Eyewear, Inc. did business as "Sign Language Habitat (hereinafter "Sign Language Eyewear d/b/a Sign Language Habitat").

7. Defendant SI Scooter Works LLC is a Pennsylvania limited liability corporation with addresses located at 406 N. Main Street, Shrewsburg, PA and at 130 Ridgefield Drive, York, PA 17403.

#### **Jurisdiction and Venue**

8. Jurisdiction properly lies in this Court pursuant to 28 U.S.C. §1332(a) in that the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs and is between citizens of a foreign state as plaintiff and citizens of Pennsylvania and other states as defendants.

9. Venue properly lies in this Court pursuant to 28 U.S.C. §1391(a) in that this is a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred and in which defendants, subject to personal jurisdiction, may be found.

**Factual Background**

10. On or about July 24, 2000, defendant Kajiya, utilizing both the trade names "SI Scooter Works" and "Sign Language Habitat", issued purchase orders to plaintiff for products in the amount of \$693,759.00. True and correct copies of these purchase orders are attached hereto and incorporated by reference as Exhibit "A".

11. Per the instructions of Mr. Kajiya, the invoices for the scooters were sent to Sign Language Eyewear d/b/a Sign Language Habitat in California and the goods were shipped to Baltimore and Washington for subsequent delivery to SI Scooter Works in York, Pennsylvania.

12. Pursuant to the terms of the purchase orders executed by the defendants, the payment terms required payment by wire transfer 30% upon shipment and the remaining 70% within one week after custom clearance at the United States border. See Exhibit "A" hereto.

13. Goods with a retail value of \$646,160.40 were shipped to defendants pursuant to the purchase orders over a period of time from August 4, 2000 through September 10, 2000. In violation of the terms of the contract between plaintiffs and defendants, defendants did not pay 30% of each shipment upon the shipping date and the remaining 70% within seven days thereafter. Rather, partial late payments were made in the amount of \$160,097.70 were paid, leaving a balance of \$486,062.70.

14. Due to defendants' payment default, goods with a retail value of \$240,575.40 were not released to defendants upon reaching the United States. Rather, those goods have been held for resale in order to mitigate plaintiff's damages. As of the date of this

Complaint, \$25,000 has been recovered for a portion of these goods, leaving an unpaid balance of \$215,575.40.

15. By reason of the foregoing, there remains a due and unpaid balance under the purchase orders in the amount of \$461,020.70.

**Claim for Relief**

16. Plaintiff repeats and incorporates its allegations contained in paragraphs 1 through 15 as if fully set forth at length herein.

17. Plaintiff contracted with the defendants to ship \$693,759.00 worth of scooters pursuant to the terms set forth in the three purchase orders attached hereto as Exhibit "A".

18. Defendants received \$405,585.00 worth of goods and violated the payment terms by failing to pay 30% of each shipment upon shipping and the remaining 70% within seven days thereafter.

19. By letter dated October 16, 2000 (Exhibit "B" hereto), plaintiff made formal demand for payment upon all defendants to pay the remaining balance due and owing under the contract between plaintiff and defendants but, despite repeated reassurances by defendants Briggs and Brigham that payment was forthcoming, no payments have been received on account of the outstanding invoices.

20. By reason of the foregoing, defendants have breached the contract represented by the purchase orders signed by defendant Kajiya on behalf of the defendants and plaintiff has been damaged for goods delivered to defendants in the amount of \$245,487.30 together with interest accruing on each invoice beginning seven days from the date of shipping.

21. On account of defendants' default under the contract, plaintiff refused to release goods after shipment with a retail contract value of \$240,575.40 and to date, has resold \$25,000 of those goods, leaving a contract balance of \$215,575.40.

WHEREFORE, plaintiff demands judgment in the amount of \$461,062.70, together with interest and the costs of this action, together with such other and further relief as the Court deems just and proper.

SILVERMAN BERNHEIM & VOGEL

BY: 

JONATHAN S. ZISS, ESQUIRE  
Two Penn Center Plaza, Suite 910  
Philadelphia, PA 19102  
(215)569-0000

# **Exhibit “A”**

11/30/2000 THU 14:57 FAX 617 720 3534

DUNNELLY CONROY &amp; GELMAN

E1023



July 24 2000

PURCHASE ORDER  
(SI-005-07-2000)

Model: CROSSTOWN	Color: Blue	Q'ty: 840	@ FOB Korea: \$ 54.90-
	Black	680	
	Red	440	
	Purple	60	
 PUSHER	Blue	780	\$ 52.80-
	Black	600	
	Red	500	
	Purple	100	
 BLAZER	Blue	600	\$ 64.50-
	Black	600	
	Green(830C)	400	
	Yellow(810G)	400	

**Conditions:**

- (1) Shipment: As per your fax letter of July 25, 2000
- (2) Payment: By cable remittance 30% after shipment, and 70% within one week after custom clearance at U.S. border.
- (3) Specification: As per your drawing No. SW01-010-027R3/SW01-R04-000R4
- (4) Transportation: By sea or air upon our instruction.

Your kind acknowledgement by return will be appreciated.

*Scott Kajiya*  
Scott Kajiya/South CA office

Head-Quarter: 717-495-7093

South CA Office: 310-783-1967

110 W. Padonia Rd. Timonium, MD 21093

1820 W. 220th. 200 Torrance, CA 90501



July 28, 2000

# PURCHASE ORDER

(SI-006-07-2000)

Model: CROSS TOWN	Color: Blue	Q'ty: 840	@ FOB. Korea: \$ 54.90-
	Black	680	
	Red	440	
	Purple	60	
PUSHER	Blue	780	\$ 52.80-
	Black	600	
	Red	500	
	Purple	100	
BLAZER	Blue	600	\$ 64.50-
	Black	600	
	Green(830C)	400	
	Yellow(810G)	400	

## Conditions:

- (1) Shipment: As per your fax letter of July 25, 2000
- (2) Payment: By cable remittance 30% after shipment, and 70% within one week after custom clearance at U.S. border.
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*Scott Kajiya*  
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Head-Quarter: 717-495-7093  
110 W. Padonia Rd. Timonium, MD 21093

South CA Office: 310-783-1967  
1820 W. 220th. 200 Torrance, CA 90501

SIGN LANGUAGE HABITAT

SIGN LANGUAGE HABITAT

1820 W. 220th 200 Torrance, CA 90501

(Tel) 310-783-1967 : (Fax) 310-703-1965

July 24, 2000

PURCHASE ORDER FOR ACCESSORIES

The followings are our order placement for the accessories for SI scooter.  
Please expedite your shipping.

Items	Quantity	@ FOB	Amount	Shipment
Paid. ⇒ Carry bag	1,500 sets	\$ 2:75	\$ 4,125	Aug. 3
Dispute. ⇒ Spare-tire (120mm dia.)	100 pairs	\$ 7:50	\$ 750	Aug. 3 (SBX-1164-01)
N/A BLAZER-XL model (Hand-made)	25 sets	\$ 130:00	\$ 3,250	Aug. 7
Total			\$ 8,125	

\* Payment: C.O.D.

*Scott*  
Scott Kajiya/Sign Language Habitat

# **Exhibit “B”**

11/30/2000 THU 14:55 FAX 81/ 120 3554

DUNNELLY CONROY &amp; GRIFFIN

0010



SHIN-EI BOEKI LTD.

新栄貿易株式会社 〒104 東京都中央区八丁堀1-1-4

NO.1-4, 1-CHOME, HATCHOBORI  
CHUO-KU, TOKYO, JAPAN 104TEL:81-3-3553-7722  
FAX:81-3-3555-1179

Scott Kajiya  
Michael W. Bingham  
S. Cary Briggs  
Page 2 of 2

October 16, 2000

products have been shipped.

Shin-Ei Boeki does acknowledge payments to date from the Opposing Party in the total amount of US\$160,097.70, on the dates and in the amounts indicated below:

<u>Opposing Party Payment Amount</u>	<u>Date of Wire Remittance</u>
US\$66,780.00	9/8 & 9/25
US\$21,785.40	9/18
US\$26,768.10	9/26
US\$44,764.20	10/10

Total Amount: US\$160,097.70

Shin-Ei Boeki acknowledges that certain products, in the amount of US\$240,575.40, are being held without release in a warehouse in California under order by Shin-Ei Boeki pending payment of the Amount Owed by the Opposing Party. If the Opposing Party does not pay the Amount Owed by the Due Date, Shin-Ei Boeki will take all necessary actions to collect the Amount Owed from the Opposing Party, will terminate without further notice all of the non-performing purchase orders and will demand compensation for damages suffered. Needless to say, if Shin-Ei Boeki terminates the non-performing purchase orders, all products presently held in the warehouse in California will not be released to the Opposing Party and Shin-Ei Boeki will be forced to find another purchaser of the products in order to mitigate its damages.

At this time, Shin-Ei Boeki presents this Demand for Payment to the Opposing Party in the amount of US\$245,487.30 and requests that this Amount Owed is paid in full by Wednesday, October 18, 2000.

Very truly yours,

11/30/2000 THU 14:54 FAX 617 720 3554

DUNNELLY CONROY &amp; G

012



SHIN-EI BOEKI LTD.

新栄貿易

社 千104 東京都中央区八丁堀1-1-4

NO.1-4, 1-CHOME, HATCHOBORI  
CHUO-KU, TOKYO, JAPAN 104

TEL:81-3-3553-7722

FAX:81-3-3555-1179

## FACSIMILE MESSAGE

Date: October 16, 2000

Total Pages: 2

To: Scott Kajiya  
Sign Language Habitat  
Fax: 1-310-783-1965Michael W. Bingham  
S. Cary Briggs  
SI Scooterworks Inc.  
Fax: 1-717-235-0918From: Mr. Shintaro Inamura  
Shin-Ei Boeki  
Fax: 3555-1179

Re: Demand For Payment

Dear Sirs:

This letter is a Demand For Payment for monies due and owed Shin-Ei Boeki by you, Sign Language Habitat and SI Scooterworks (hereinafter singularly and collectively the "Opposing Party") in the amount of US\$245,487.30 (the "Amount Owed"). Shin-Ei Boeki hereby demands payment in full by Wednesday, October 18, 2000 (the "Due Date") by the Opposing Party of the Amount Owed. In the event the Amount Owed is not remitted in full to Shin-Ei Boeki by the Due Date, Shin-Ei Boeki will avail itself of all necessary and available legal remedies to protect its interests and to recover the Amount Owed.

The Amount Owed is a result of non-payment by the Opposing Party of the following purchase orders (the "Purchase Orders") issued by the Opposing Party and signed by Scott Kajiya. Purchase Orders SI-005-07-2000, dated July 24, 2000 for products in the amount of US\$344,442.00, SI-006-07-2000, dated July 28, 2000 for products in the amount of US\$344,442.00, and "Purchase Order For Accessories" dated July 24, 2000 for products in the amount of US\$4,875.00. The total purchase price for the Purchase Orders is US\$693,759.00. Pursuant to Condition (2) of the first two purchase orders referenced above, payment is to be made "By cable remittance 30% after shipment, and 70% within one week after custom clearance at U.S. border". Pursuant to the third purchase order referenced above, payment is to be made by cash on delivery. Shin-Ei Boeki acknowledges that certain products, in the amount of US\$47,598.60, have not been shipped by Shin-Ei Boeki to the Opposing Party as a result of the delay in payment of the Amount Owed by the Opposing Party. Other than those products, however, all